

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JIMMY NICK MARTINEZ,

Defendant-Appellant.

UNPUBLISHED

September 11, 2007

No. 272376

Gratiot Circuit Court

LC No. 06-005164-FH

Before: Markey, P.J., and Saad and Wilder, JJ.

MEMORANDUM.

Following a jury trial, defendant was convicted of one count of prisoner possessing weapons, MCL 800.283(4). He was sentenced as a second habitual offender, MCL 769.10, to serve 30 to 90 months, consecutive to his current prison term. Defendant appeals as of right, and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole argument on appeal is that the evidence presented at trial was insufficient to convict him. Specifically, defendant argues that the prosecution failed to establish that he was in possession of the weapons. We disagree.

When reviewing a challenge to the sufficiency of the evidence, the "evidence is reviewed de novo, in a light most favorable to the prosecution, to determine whether the evidence would justify a rational jury's finding that the defendant was guilty beyond a reasonable doubt." *People v McGhee*, 268 Mich App 600, 622; 709 NW2d 595 (2005). The issue of credibility is for the jury to decide. We do not revisit credibility issues on appeal. *People v Milstead*, 250 Mich App 391, 404; 648 NW2d 648 (2002). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992).

To convict defendant of prisoner possessing weapons, the prosecution was required to prove that: (1) defendant was a prisoner with the Department of Corrections; (2) defendant knowingly possessed or had under his control a weapon or an implement; and (3) the weapon or implement could be used to injure someone else or assist in an effort to escape. MCL 800.283(4).

It was undisputed that defendant was an inmate at the St. Louis Correctional Facility, and that two metal weapons were found on the ground next to him. Defendant's argument that

insufficient evidence was presented to establish possession of the weapons is predicated on the assertion that the weapons found in the rolled towel did not belong to him. At trial, two prison guards testified that they saw defendant drop the towel containing the weapons after he was ordered to stop for a shakedown. Defendant testified that the weapons were not his, and that he did not know how they ended up on the ground next to him. Deferring to the jury's superior position to judge witness credibility, *Milstead, supra* at 404, and viewing the evidence presented in a light most favorable to the prosecution, *Wolfe, supra* at 515, we hold that sufficient evidence was presented to support defendant's conviction.

Affirmed.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Kurtis T. Wilder